



# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

JUN 18 2015

3M Library Systems  
3M Center, Bldg. 225-4N-14  
St. Paul, MN 55144

Attention: Mary Zilles; Bid Manager

Reference: RFP 2000001143, Library Self Check Out Solution

Dear Ms. Zilles:

## Acceptance Agreement

**Contract Number: 4400005445**

This Acceptance Agreement signifies a contract for a Library Self-Check-Out Solution. The period of the contract shall be from Date of Award through June 30, 2016, with three (3) one-year renewal options.

The contract award shall be in accordance with:

- 1) This Acceptance Agreement; and
- 2) The Attached Memorandum of Negotiation.

Please note that this is not an order to proceed. A Purchase Order constituting your notice to proceed will be issued to your firm. Please provide your Insurance Certificate according to the revised Special Provisions, Section 17, within 10 days after receipt of this letter. All questions in regards to this contract shall be directed to the Contract Specialist, Kristy D. Varda, at 703-324-3217 or via e-mail at [kristy.varda@fairfaxcounty.gov](mailto:kristy.varda@fairfaxcounty.gov).

Sincerely,

Cathy A. Muse, CPPO  
Director/County Purchasing Agent

---

**Department of Purchasing & Supply Management**

12000 Government Center Parkway, Suite 427  
Fairfax, VA 22035-0013

**Website:** [www.fairfaxcounty.gov/dpsm](http://www.fairfaxcounty.gov/dpsm)

**Phone** 703-324-3201, **TTY:** 1-800-828-1140, **Fax:** 703-324-3228



# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

## MEMORANDUM OF NEGOTIATIONS RFP2000001143


The County of Fairfax (hereinafter called the County) and 3M Library Systems. (hereinafter called the Contractor) hereby agree to the following in the execution of Contract 4400005445 for Library Self Check-Out Solution. The final Contract contains the following documents:

- a. County's Request for Proposal RFP2000001143 and all Addenda;
- b. The Contractor's Technical Proposal dated May 7, 2014;
- c. The Contractor's Additional Information dated October 8, 2014;
- d. The Contractor's Owner's Manual and Administrator's Guide;
- e. The attached Sales Agreement including Exhibit E;
- f. This Memorandum of Negotiation and any Attachments;
- g. County purchase order;
- h. Any amendments subsequently issued.

In addition, the County and the Contractor agreed to the following:

1. The County reserves the right to use the Contractor's Check-In services, installed and available with the purchased devices at a later date at no additional cost.
2. Special Provisions paragraph 17, Insurance, is modified to read as per the attached.
3. Margaret Kositch will be the County's Technical Point of Contact (POC) for this contract.

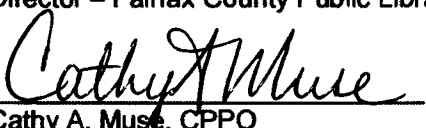
### ACCEPTED BY:

  
Mary Zilles, Bid Manager  
3M Library Systems

6/3/15  
Date

  
Edwin Clay  
Director – Fairfax County Public Library

6/3/15  
Date

  
Cathy A. Muse, CPPO  
Director/County Purchasing Agent

6/17/15  
Date

Department of Purchasing & Supply Management  
12000 Government Center Parkway, Suite 427  
Fairfax, VA 22035-0013

Website: [www.fairfaxcounty.gov/dpsm](http://www.fairfaxcounty.gov/dpsm)  
Phone 703-324-3201, TTY: 1-800-828-1140, Fax: 703-324-3228

## LIBRARY SYSTEMS SALES AGREEMENT BETWEEN 3M AND FAIRFAX COUNTY

THIS SALES AGREEMENT ("Agreement") is made and effective as of the 18 day of June, 2015 between 3M Company, a Delaware corporation, 3M Library Systems, with a place of business at 3M Center, Bldg 225-4N-14, St. Paul, MN 55144 ("3M"), and Fairfax County, with a place of business at 12000 Government Center Parkway, Fairfax, VA 22035 ("Customer"). Customer and 3M are individually referred to herein as a "Party" and collectively referred to herein as the "Parties".

### Terms and Conditions:

1. Definition. The definitions below shall have the same meaning throughout the Agreement and the attached Exhibits.
  - A. "Agreement" means this Library Systems Sales Agreement and the following attachments:
    - Exhibit A – Equipment, Services and Pricing
    - Exhibit B – Software License Agreement(s)
    - Exhibit C – Service Agreement
    - Exhibit D – Product Performance Guarantee and Standard Warranty
    - Exhibit E – Acceptance Form
  - B. "System" means all software, hardware, tags and related supplies as set forth in Exhibit D.
2. Installation. 3M will provide installation. Site preparation to be provided by the customer prior to installation to include the following: electrical power, data drop, conduit runs, hole drilling, and moving of existing fixtures that may be required.
3. Term. This Agreement is made pursuant to Contract No. 4400005445 between Customer and 3M ("the Contract"), which is incorporated herein by reference as if set forth herein, and shall be in effect from the date it is fully executed through June 30, 2016.
4. Software. Software included in the Equipment listed above is licensed to Customer pursuant to the applicable license agreements which are attached hereto as Exhibit B. In no event will Customer permit concurrent use by more than the number of users for which applicable license fees have been paid. A breach of the applicable license agreement shall be considered a breach of this Agreement.
5. Software Ownership. The Software is and shall remain at all times the personal property of 3M (or its suppliers), irrespective of how the Software may be installed or used by Customer. 3M (or its suppliers) retains all ownership rights in the Software and Customer recognizes and agrees that it does not acquire, by this Agreement, any ownership rights, including copyright rights in the Software.
6. Support. Support obligations are as set forth in Exhibit B.
7. Purchase Orders. Buyer shall place POs for all component purchases under this Agreement. The only terms in such POs that will bind 3M will be the Buyer's name and address, dates, quantities, and description of components, provided that such terms do not conflict with nor add to the terms of this Agreement.
8. Pricing. Prices include set up and configuration, a twelve (12) month Service Agreement, Shipping and Product Warranty as set forth in Exhibits A and C.
9. Payment. Subject to the terms of the Contract, payment is due net 30 days from date of execution of a certificate of Acceptance by the Fairfax County Purchasing Agent. No terms or conditions on any invoice shall change the payment terms set forth in this paragraph and this paragraph shall supersede any invoice language. All payments and other financial obligations of the Customer are subject to appropriations by the Fairfax County Board of Supervisors.
10. Title and Risk of Loss. 3M retains sole ownership and, with the exception of loss or damage caused by 3M, its subcontractors, employees or agents, Customer is responsible for any damage or loss after acceptance, of the System until Customer makes full payment therefore or until 3M receives possession of the System. Title to the System, other than Software and the Conversion Station, will transfer to Customer upon 3M's receipt of full payment therefore.
11. Taxes. Prices do not include applicable taxes. It is acknowledged that Customer is a political subdivision of the Commonwealth of Virginia and is therefore exempt from taxation.
12. Non-Disclosure Obligations. The parties acknowledge that the terms of this Agreement shall be subject to disclosure under the Virginia Freedom of Information Act ("VFOIA"). 3M acknowledges that any information that 3M submits to Customer pursuant to the terms of this

## LIBRARY SYSTEMS SALES AGREEMENT BETWEEN 3M AND FAIRFAX COUNTY

Agreement shall be subject to VFOIA; therefore, such information may be excluded from the mandatory disclosure provisions of the VFOIA if 3M identifies and properly invokes a VFOIA exclusion in writing. If Customer receives a request for disclosure of 3M information under VFOIA, Customer shall promptly notify 3M. All information provided by Customer shall be treated as confidential information and may be used by 3M only in furtherance of the performance of the Contract. Proprietary and confidential information for which 3M identifies and properly invokes a VFOIA exclusion in writing ("3M Confidential Information") will be disclosed by 3M to Customer during the term of this Agreement. Subject to the disclosure requirements of VFOIA, Customer agrees not to disclose 3M Confidential Information to any third parties if 3M identifies and properly invokes a VFOIA exclusion in writing and agrees to use the same efforts to prevent its disclosure as is used to protect its own confidential information, with no less than a reasonable standard of care. Confidential Information does not include information that (a) was in Customer's possession before receipt from 3M, provided that the information is not known to Customer to be subject to another confidentiality agreement with or other obligation of secrecy to 3M; (b) is or becomes generally available to the public through no fault of Customer; (c) is received in good faith by Customer from a third party and is not subject to an obligation of confidentiality owed to 3M or a third party; or (d) is independently developed by Customer without reference to 3M Confidential Information received hereunder. The obligations contained in this paragraph shall survive termination of this Agreement.

13. Intentionally Omitted.
14. Force Majeure. Neither party shall be responsible for any delay or failure of performance hereunder due to, including, but not limited to, strikes, lockout, shortage of labor or other labor disturbances, riots, invasion, war, fire, explosion, sabotage, storm, flood, earthquake, , fuel, power, or, or any other causes whatsoever beyond the reasonable control of the parties.
15. Relationship of the Parties. Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, agent, or employment relationship between the parties. Neither party shall have the authority to obligate or otherwise act as a representative of, or agent for, the other party for any purpose, and neither party shall make any representations or hold itself out as having such authority.
16. Limitation of Liability. WITH THE EXCEPTION OF LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT, 3M SHALL NOT BE LIABLE TO THE OTHER PARTY, ITS SUCCESSORS, OR ASSIGNS FOR INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, OR LOSS OF LABOR, OVERHEAD, BUSINESS OPPORTUNITY, DATA, INCOME, PROFIT, REVENUE OR SAVINGS OF ANY PARTY, INCLUDING THIRD PARTIES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE LEGAL THEORY ASSERTED, INCLUDING BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, INTENDED CONDUCT, STRICT LIABILITY IN TORT, EQUITY OR ANY OTHER LEGAL THEORY. UNLESS OTHERWISE PROHIBITED BY LAW, WITH THE EXCEPTION OF LIABILITY FOR PERSONAL INJURY, DEATH, PROPERTY DAMAGE, INTELLECTUAL PROPERTY DAMAGE AND LIABILITY FOR DISCLOSURE OF CONFIDENTIAL OR PERSONAL INFORMATION, 3M'S MAXIMUM LIABILITY SHALL NOT EXCEED TOTAL AMOUNTS PAYABLE UNDER CONTRACT NO. 4400005445 AS DEFINED IN PARAGRAPH 3 OF THIS AGREEMENT. In the case of alleged intellectual property infringement, the Customer shall provide 3M prompt notice of such infringement. In the case of alleged intellectual property infringement, , upon 3M's choice, 3M shall provide: (i) full refund of price of the allegedly infringing product; or (ii) replacement of product with a non-infringing alternative. 3M does not have any duty of indemnification in the event the alleged intellectual property infringement arises out of (i) use by Customer of delivered software outside of the scope of the license, (ii) modifications to delivered software other than by 3M or its authorized representatives, or by or for the Customer in accordance with 3M's express, written instructions, (iii) modifications to delivered software by 3M or its authorized representatives performed to meet the Customer's unique requirements specifically requested by Customer, (iv) Customer's combination or use of delivered software with software, systems and equipment not provided by 3M or otherwise authorized in writing by 3M or as provided in the Contract.
17. Disputes. Any questions, claims, disputes or litigation arising from or related to the making, performance or alleged breach of this Agreement, or to any available remedies (a "Dispute"), shall be governed by the laws as set forth in Sec. 18 below, and shall be resolved as follows as set forth in paragraph 73 of the General Conditions and Instructions to Bidders, Appendix \_\_\_ of the RFP
18. Applicable Law and Venue. This Agreement shall be governed by the laws of the Commonwealth of Virginia, without regard to its principles of conflicts of law. Any lawsuit commenced by a party to this Agreement must be commenced in the federal court for the Eastern District of Virginia or state court of competent jurisdiction in Fairfax County, Virginia.
19. Assignment. No party to this Agreement may assign, transfer, sublicense, or delegate this Agreement or any of its rights, duties, obligations, or interests under this Agreement without the other party's prior written approval. This Agreement will not be considered a transferable asset. 3M expressly reserves the right to terminate this Agreement on: (i) the sale of all or substantially all of the stock of any party to this Agreement, (ii) the sale or transfer of the entire business or substantially all the assets of any party to this Agreement, or (iii) any significant change in the management or control of any party to this Agreement. Any assignment, transfer, or delegation of this Agreement or any interest in this Agreement, without the other party's prior written consent, is voidable at the other party's option and cause for termination of

## LIBRARY SYSTEMS SALES AGREEMENT BETWEEN 3M AND FAIRFAX COUNTY

this Agreement. Nothing in this Agreement will be construed to grant any person or entity not a party to this Agreement any rights or powers whatsoever. No person or entity will be a third party beneficiary of this Agreement.

20. Waiver. The waiver or failure of either party to exercise in any respect any rights provided for in this Agreement shall not be deemed a waiver of any further right by such party under this Agreement.
21. Severability. If a court or tribunal of competent jurisdiction will for any reason, hold any provision of this Agreement invalid, illegal, or unenforceable, the provision will be deemed severable and the invalidity, illegality, or unenforceability will not affect any other provision of this Agreement which must be enforced in accordance with the intent of this Agreement, however, a party adversely affected by such holding may terminate this Agreement effective immediately, without penalty, upon notice thereof to the other party.
22. Acceptance. The Contract, including this Agreement and its Exhibits, is not binding on the parties until it has been accepted in writing by the Fairfax County Purchasing Agent and 3M Library Systems at 3M Center, St. Paul, MN. This is the sole and exclusive manner of acceptance. Any other promise or act, including a promise to ship or shipment, does not constitute acceptance by 3M of this Agreement. Once signed, please deliver this Agreement to 3M by fax or mail: 3M Library Systems Customer Service Fax 1-800-223-5563 or 3M Company, PO Box 33682, St. Paul, MN 55113-3682. For questions, call Customer Service 1-800-328-0067. Fed ID# 41-041-7775.
23. Entire Agreement and Amendments. The Contract, including this Agreement and its Exhibits, are intended to be the final, complete and exclusive statement of all terms and conditions of the agreement between the parties relating to the matters covered and supersedes all prior agreements, whether written or oral, all other communications between the parties relating to the subject matter of this Agreement and any course of dealing or usage of trade. Each party agrees that it has not relied on any representation or warranty not expressly stated in this Agreement. This Agreement can be amended only by a writing signed by both parties. No oral modification is possible. A course of performance does not effect a modification or a waiver unless ratified in writing by the party to be bound.
24. Use of Contract by Other Entities. Contract pricing may be extended to other entities by mutual agreement of parties and in compliance with all applicable laws.

**LIBRARY SYSTEMS SALES AGREEMENT  
BETWEEN 3M AND FAIRFAX COUNTY**

**Exhibit A  
Equipment, Services and Pricing**

**Customer Name:** Fairfax County Public Libraries

**Installation Site(s):** Various

SelfCheck Model ("Product")	Price per unit	Shipping
3M SelfCheck™- Desktop Components	\$4,999	\$100 each
3M SelfCheck™- Tabletop	\$7,199	\$100 each
3M SelfCheck™- Kiosk	\$8,699	\$150 each
<b>Additional Products</b>		
3M Command Center Software up to 100 networked 3M devices	\$1,999	NA
Comprise Smart Payment Terminals	\$1,525	\$10 each

Pricing above includes products, set-up and configuration, training and 12 month warranty.  
Discount will be given when ordering quantities of more than 100.

On-going Support

Item	Annual Renewal				Multi-Year Agreement – Prepaid		
	Year 2 Unit Price	Year 3 Unit Price	Year 4 Unit Price	Year 5 Unit Price	Additional 2 Years Prepaid	Additional 3 Years Prepaid	Additional 4 Years Prepaid
3M SelfCheck™ R-Series Desktop Components	\$699 ea	\$699 ea	\$713 ea	\$734 ea	\$1,258 ea	\$1,887 ea	\$2,516 ea
3M SelfCheck™ R-Series Table top	\$749 ea	\$749 ea	\$764 ea	\$787 ea	\$1,348 ea	\$2,022 ea	\$2,696 ea
3M SelfCheck™ R-Series Kiosk	\$749 ea	\$749 ea	\$764 ea	\$787 ea	\$1,348 ea	\$2,022 ea	\$2,696 ea
3M Command Center Enterprise (100) units Subscription	\$1,599 ea	\$1,599 ea	\$1,631 ea	\$1,680 ea	\$2,878 ea	\$4,317 ea	\$5,756 ea
Comprise Smart Payment Terminal Subscription	\$331 ea	\$331 ea	\$338 ea	\$348 ea	\$596 ea	\$894 ea	\$1,192 ea

The contract may be renewed for three (3) one-year periods as mutually agreed upon. Pricing shall remain firm for one year. Changes in cost for any subsequent contract years may be based on the Consumer Price Index (CPI-U) and justified per the RFP.

**LIBRARY SYSTEMS SALES AGREEMENT  
BETWEEN 3M AND FAIRFAX COUNTY**

**Attachment B**

**3M SELF-CHECK SYSTEM SOFTWARE LICENSE ("License")**

**USE OF THE 3M™ SELF-CHECK™ SYSTEM SOFTWARE IS GOVERNED SOLELY BY THE TERMS OF THIS LICENSE. THE SOFTWARE MAY BE USED BY CUSTOMER AND ITS EMPLOYEES AND AGENTS ONLY FOR CUSTOMER'S BENEFIT AND IN ACCORDANCE WITH THE LICENSE SET FORTH BELOW:**

**1. 3M SelfCheck System Software.** As used in this License, "Software" means the proprietary 3M SelfCheck System Software licensed to Customer (initial below):

  X   **3M SelfCheck System "R Series" Software**

including but not limited to any updates (e.g., maintenance releases, modifications to existing functionality or new functionality) that may be provided to Customer by 3M, at 3M's option, during the term of this License. 3M is under no obligation to issue updates; however, if an update is developed then the Service Agreement Terms and Conditions provide access to those updates.

**2. License.** This License is made pursuant to Contract No. 4400005445 between Customer and 3M ("the Contract"), which is incorporated herein by reference as if set forth herein. During the term of this License, 3M grants Customer the nonexclusive, nontransferable right to use the Software solely for Customer's internal business purposes, and only in combination with 3M Self-Check system hardware, with the exception of the Model 895 Software which may be installed on a single personal computer at the Customer's location. Except as provided above, Customer may not use the Software with scanning equipment or similar hardware supplied by any other party. The parties acknowledge that the Software is the sole and exclusive property of 3M or its licensors. Portions of the Software provided by 3M's licensors are subject to the additional Apache license terms attached hereto. Certain features of the Software may be provided on a time limited basis or subject to other conditions, as referred to in the exhibits to the Sales Agreement between 3M and the Customer, or other addendum to this License. 3M's grant of a license is expressly conditioned upon Licensee's use of the Software pursuant to this License; any other use shall be considered unlicensed and shall subject Licensee to any and all remedies available to 3M at law or equity, including but not limited to claims of copyright infringement.

**3. Prohibitions.** Customer may not, without 3M's prior written consent (i) sublicense, lease, lend or transfer the Software to any third party; (ii) use, or permit the use of, the Software for the benefit of, or by, any non-patron third party, such as use of the software as a service bureau; (iii) make copies of the Software except in the normal course of use or for archival purposes; (iv) use the Software at any location other than the Site; or (v) disassemble, reverse engineer or create derivative works of the Software except as permitted by law. Customer agrees to reproduce all copyright and proprietary rights notices included in the Software on copies that it is authorized to make.

**4. Operating Results.** Customer is solely responsible for the use it makes of the Software. 3M is not responsible for monitoring and verifying the input to and output from the Software.

**5. LIMITED WARRANTY AND DISCLAIMER.** 3M warrants to Customer that, for a twelve (12) month period following installation, inspection, and acceptance of the Software, the then-current version of the Software will perform in accordance with the requirements of the Contract and 3M Owner's Manual and Administrator's Guide when used as instructed. If the Software fails to meet this warranty, 3M's sole obligations and Customer's sole remedies will be, at 3M's option, replacement or correction of the Software to perform as warranted or Customer may, under the Performance Guarantee (Ex. C) return the affected Product and 3M will refund amounts paid for that Product. This warranty is void if the Software is (i) modified by a party other than 3M, its subcontractors, employees or agents; or (ii) used with software or equipment not approved by 3M; or (iii) used as not intended or permitted in the Contract herein. **EXCEPT FOR THIS LIMITED WARRANTY AND ANY OTHER WARRANTY PROVIDED UNDER THE CONTRACT, 3M AND ITS LICENSORS DISCLAIM ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE AND THOSE ALLEGEDLY ARISING FROM TRADE USAGE OR COURSE OF DEALING. 3M DOES NOT WARRANT THAT THE SOFTWARE IS FREE FROM ALL BUGS, ERRORS OR OMISSIONS.**

## LIBRARY SYSTEMS SALES AGREEMENT BETWEEN 3M AND FAIRFAX COUNTY

**6. Limitation of Liability.** 3M and its licensors will not be liable to Customer for any loss or damage resulting from lost data or information. See Paragraph 16 above in Library System Sales Agreement for Limitation of Liability.

**7. Term and Termination.** This License will terminate if a party materially breaches a provision of this License and fails to cure such breach within thirty (30) days after receiving a written notice of breach from the non-breaching party. Upon termination of this License for any reason, Customer shall cease all further use of the Software and, at 3M's option, destroy or return to 3M all copies then in Customer's possession or control. At 3M's request, Customer will certify to 3M in writing that it is in full compliance with the requirements of this paragraph.

**8. U.S. Government End Users.** This provision applies to all acquisitions of this Software by or for the Federal Government or by any prime contractor or subcontractor (at any tier) for the Federal Government under any contract, grant, cooperative agreement, other transaction, or other agreement with the Federal Government. By accepting delivery of this Software, the Federal Government hereby agrees that this Software qualifies as "commercial" computer software within the meaning of the acquisition or financial assistance regulations applicable to this procurement. The terms and conditions of this License shall apply to the Government's use and disclosure of this Software and shall supersede any conflicting contract terms and conditions. If this License fails to meet the Government's needs or is inconsistent with federal law, the Federal Government agrees to return this Software, unused, to 3M. The following additional statement applies only to acquisitions governed by DFARS Subpart 227.4 (October 1988): "Restricted Rights—Use, duplication and disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 (OCT. 1988)."

**9. Export Law Assurances.** The laws and regulations of the United States restrict the export and re-export of commodities and technical data of United States origin, including the Software. Customer agrees that it will not export or re-export the Software in any form without the appropriate United States Government and foreign government licenses. Customer agrees that its obligations under this paragraph survive and continue after any termination or expiration of rights under this License.

**10. General Provisions.** The provisions of paragraphs 5, 6, 7, 8 and 9 will survive any termination or expiration of rights under this License.



# LIBRARY SYSTEMS SALES AGREEMENT BETWEEN 3M AND FAIRFAX COUNTY

Apache License  
Version 2.0, January 2004  
<http://www.apache.org/licenses/>

## TERMS AND CONDITIONS FOR USE, REPRODUCTION, AND DISTRIBUTION

3M's obligations to the Customer with respect to providing the Library Systems Equipment, Software and Services are governed by the terms of the Contract and are not limited by the Apache License. Notwithstanding any provision of the Apache License to the contrary, the Apache License shall not diminish or alter any rights of Customer or obligations of 3M under Contract # 4400005445, including but not limited to 3M's responsibilities for warranties, maintenance and indemnification.

### 1. Definitions.

"License" shall mean the terms and conditions for use, reproduction, and distribution as defined by Sections 1 through 9 of this document.

"Licensor" shall mean the copyright owner or entity authorized by the copyright owner that is granting the License.

"Legal Entity" shall mean the union of the acting entity and all other entities that control, are controlled by, or are under common control with that entity. For the purposes of this definition, "control" means (i) the power, direct or indirect, to cause the direction or management of such entity, whether by contract or otherwise, or (ii) ownership of fifty percent (50%) or more of the outstanding shares, or (iii) beneficial ownership of such entity.

"You" (or "Your") shall mean an individual or Legal Entity exercising permissions granted by this License.

"Source" form shall mean the preferred form for making modifications, including but not limited to software source code, documentation source, and configuration files.

"Object" form shall mean any form resulting from mechanical transformation or translation of a Source form, including but not limited to compiled object code, generated documentation, and conversions to other media types.

"Work" shall mean the work of authorship, whether in Source or Object form, made available under the License, as indicated by a copyright notice that is included in or attached to the work (an example is provided in the Appendix below).

"Derivative Works" shall mean any work, whether in Source or Object form, that is based on (or derived from) the Work and for which the editorial revisions, annotations, elaborations, or other modifications represent, as a whole, an original work of authorship. For the purposes of this License, Derivative Works shall not include works that remain separable from, or merely link (or bind by name) to the interfaces of, the Work and Derivative Works thereof.

"Contribution" shall mean any work of authorship, including the original version of the Work and any modifications or additions to that Work or Derivative Works thereof, that is intentionally submitted to Licensor for inclusion in the Work by the copyright owner or by an individual or Legal Entity authorized to submit on behalf of the copyright owner. For the purposes of this definition, "submitted" means any form of electronic, verbal, or written communication sent to the Licensor or its representatives, including but not limited to communication on electronic mailing lists, source code control systems, and issue tracking systems that are managed by, or on behalf of, the Licensor for the purpose of discussing and improving the Work, but excluding communication that is conspicuously marked or otherwise designated in writing by the copyright owner as "Not a Contribution."

"Contributor" shall mean Licensor and any individual or Legal Entity on behalf of whom a Contribution has been received by Licensor and subsequently incorporated within the Work.

## LIBRARY SYSTEMS SALES AGREEMENT BETWEEN 3M AND FAIRFAX COUNTY

**2. Grant of Copyright License.** Subject to the terms and conditions of this License, each Contributor hereby grants to You a perpetual, worldwide, non-exclusive, no-charge, royalty-free, irrevocable copyright license to reproduce, prepare Derivative Works of, publicly display, publicly perform, sublicense, and distribute the Work and such Derivative Works in Source or Object form.

**3. Grant of Patent License.** Subject to the terms and conditions of this License, each Contributor hereby grants to You a perpetual, worldwide, non-exclusive, no-charge, royalty-free, irrevocable (except as stated in this section) patent license to make, have made, use, offer to sell, sell, import, and otherwise transfer the Work, where such license applies only to those patent claims licensable by such Contributor that are necessarily infringed by their Contribution(s) alone or by combination of their Contribution(s) with the Work to which such Contribution(s) was submitted. If You institute patent litigation against any entity (including a cross-claim or counterclaim in a lawsuit) alleging that the Work or a Contribution incorporated within the Work constitutes direct or contributory patent infringement, then any patent licenses granted to You under this License for that Work shall terminate as of the date such litigation is filed.

**4. Redistribution.** You may reproduce and distribute copies of the Work or Derivative Works thereof in any medium, with or without modifications, and in Source or Object form, provided that You meet the following conditions:

- a. You must give any other recipients of the Work or Derivative Works a copy of this License; and
- b. You must cause any modified files to carry prominent notices stating that You changed the files; and
- c. You must retain, in the Source form of any Derivative Works that You distribute, all copyright, patent, trademark, and attribution notices from the Source form of the Work, excluding those notices that do not pertain to any part of the Derivative Works; and
- d. If the Work includes a "NOTICE" text file as part of its distribution, then any Derivative Works that You distribute must include a readable copy of the attribution notices contained within such NOTICE file, excluding those notices that do not pertain to any part of the Derivative Works, in at least one of the following places: within a NOTICE text file distributed as part of the Derivative Works; within the Source form or documentation, if provided along with the Derivative Works; or, within a display generated by the Derivative Works, if and wherever such third-party notices normally appear. The contents of the NOTICE file are for informational purposes only and do not modify the License. You may add Your own attribution notices within Derivative Works that You distribute, alongside or as an addendum to the NOTICE text from the Work, provided that such additional attribution notices cannot be construed as modifying the License.

You may add Your own copyright statement to Your modifications and may provide additional or different license terms and conditions for use, reproduction, or distribution of Your modifications, or for any such Derivative Works as a whole, provided Your use, reproduction, and distribution of the Work otherwise complies with the conditions stated in this License.

**5. Submission of Contributions.** Unless You explicitly state otherwise, any Contribution intentionally submitted for inclusion in the Work by You to the Licensor shall be under the terms and conditions of this License, without any additional terms or conditions. Notwithstanding the above, nothing herein shall supersede or modify the terms of any separate license agreement you may have executed with Licensor regarding such Contributions.

**6. Trademarks.** This License does not grant permission to use the trade names, trademarks, service marks, or product names of the Licensor, except as required for reasonable and customary use in describing the origin of the Work and reproducing the content of the NOTICE file.

**7. Disclaimer of Warranty.** Unless required by applicable law or agreed to in writing, Licensor provides the Work (and each Contributor provides its Contributions) on an "AS IS" BASIS, WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, either express or implied, including, without limitation, any warranties or conditions of TITLE, NON-INFRINGEMENT, MERCHANTABILITY, or FITNESS FOR A PARTICULAR PURPOSE. You are solely responsible for determining the appropriateness of using or redistributing the Work and assume any risks associated with Your exercise of permissions under this License.

**8. Limitation of Liability.** In no event and under no legal theory, whether in tort (including negligence), contract, or otherwise, unless required by applicable law (such as deliberate and grossly negligent acts) or agreed to in writing, shall any Contributor be liable to You for damages, including any direct, indirect, special, incidental, or consequential damages of any character arising as a result of this License or out of the use or inability to use the Work (including but not limited to damages for loss of goodwill, work stoppage,

## LIBRARY SYSTEMS SALES AGREEMENT BETWEEN 3M AND FAIRFAX COUNTY

computer failure or malfunction, or any and all other commercial damages or losses), even if such Contributor has been advised of the possibility of such damages.

**9. Accepting Warranty or Additional Liability.** While redistributing the Work or Derivative Works thereof, You may choose to offer, and charge a fee for, acceptance of support, warranty, indemnity, or other liability obligations and/or rights consistent with this License. However, in accepting such obligations, You may act only on Your own behalf and on Your sole responsibility, not on behalf of any other Contributor, and only if You agree to indemnify, defend, and hold each Contributor harmless for any liability incurred by, or claims asserted against, such Contributor by reason of your accepting any such warranty or additional liability.

END OF TERMS AND CONDITIONS

LIBRARY SYSTEMS SALES AGREEMENT  
BETWEEN 3M AND FAIRFAX COUNTY

Exhibit C

Service Agreement

3M  
Service  
Agreement  
Library Systems

*Agreement Issued To:*

The final agreement will incorporate contract and actual products with serial numbers for Fairfax County. There are no additional fees for first 12 months of service. Service Agreements can be purchased for continuing service after the first 12 months.

This Service Agreement covers the Equipment listed below for the period shown.  
(Please see reverse side for important terms and conditions.)

Model Number	Serial Number	Annual Fee	Zone Fee
--------------	---------------	------------	----------

**When You Need Service:** Call 1-800-328-0067 and select option #1 to place a service call. You'll need to give your Model and Serial Number when requesting service.

**Service Agreement Number:** \_\_\_\_\_  
**Service Agreement Effective Period:** Begins: \_\_\_\_\_ Ends: \_\_\_\_\_

**OUR PLEDGE**

We are a worldwide team of professional men and women committed to providing innovative products and services that exceed customer expectations. By constantly consulting our customers, and our competitors' customers, we seek to be the business partner that inspires confidence and trust through market-directed research and product development.

**LIBRARY SYSTEMS SALES AGREEMENT  
BETWEEN 3M AND FAIRFAX COUNTY**

**Service Agreement Terms and Conditions**

**WHAT WE WILL DO:**

**Hardware:** In consideration of payment of the agreement price, 3M will furnish labor and replacement parts necessary to maintain the Equipment specified in this agreement in proper operating condition during the term of this agreement, provided that the Equipment is installed by an authorized 3M Service Provider and used as directed in the Owner's Manual and Administrator's Guide. This Service Agreement covers Equipment failure during normal usage. 3M agrees to provide:

- On-site remedial maintenance during On-Site Coverage Hours When 3M is notified that the Equipment is not in good working order. 3M will provide a toll-free telephone number for Customer to place, and 3M will receive, Equipment maintenance service calls twenty-four (24) hours per day, seven (7) days per Week.
- All labor, service parts and Equipment modifications 3M deems necessary to maintain the Equipment in good working order. All service parts will be furnished on an exchange basis and will be new parts or parts of equal quality. For certain Equipment, 3M reserves the right to replace the entire unit with new equipment or equipment of equal quality when 3M determines that replacement is more economical than on-site repair. All Equipment and service parts removed for replacement become the property of 3M.

**Software:** In consideration of payment of the agreement price, 3M will furnish over-the-phone software support and remote troubleshooting of the 3M Software specified in this agreement as well as updates necessary to maintain the 3M Software specified in this agreement in proper operating condition during the term of this agreement, provided that the 3M Software is installed and used as directed. 3M agrees to provide:

- All software configuration modifications 3M deems necessary to maintain the 3M Software in good working order
  - 3M Software updates
  - Internet Filter list updates (as applicable)
- A toll-free telephone number for Customer to place, and 3M to receive, software support calls. Over-the-phone software support calls may be placed twenty-four (24) hours per day, seven (7) days per week. Calls will be addressed during 3M Software Support Coverage Hours in the order they were received.

**WHAT IS NOT COVERED:** The basic maintenance fee does not include, and 3M is not obligated to provide or perform repair of damage or increase in service time caused by (i) failure of Customer to provide continually a proper operating environment and supply of power as prescribed by the Equipment manufacturer and set forth in the 3M Owner's Manual and Administrator's Guide; (ii) accident; (iii) Acts of God, including but not limited to fire, flood, water, wind and lightning; (iv) neglect, abuse or misuse; (v) failure of Customer to follow 3M's published operating instructions; (vi) modification, service or repair of the Equipment by other than 3M authorized personnel; (vii) use of Equipment and Software for purposes other than for which designed as set forth in the 3M Owner's Manual and Administrator's Guide; (viii) painting or refinishing the equipment; (ix) relocation of the equipment; (x) replacement of broken or damaged cabinetry; to include items such as lattices, base covers, book check covers, etc.; (xi) electrical work external to the Equipment; (xii) cosmetic restoration (e.g., filling of holes in floor or walls, plugging or wire run openings, removal of tape residue, etc.) after removal or relocation of equipment for any reason; (xiii) restoration of Equipment performance when it has been degraded by placement of unauthorized interference sources within the affected range of said equipment; (xiv) service requests related to use of markers (strips) other than those manufactured by 3M or its authorized distributor(s), (xv) modification, or repair of the 3M Software by other than 3M or its authorized representatives; (xvi) virus / hacker activity ; and (xvii) Non-3M Software related updates and upgrades including, but not limited to, Operation System, Anti-Virus, Intrusion Detection.

**RENEWAL:** This agreement is NOT automatically renewable. If a renewal agreement is offered by 3M, the agreement price quoted will reflect the age of the product and the service costs at the time of renewal.

**LIBRARY SYSTEMS SALES AGREEMENT  
BETWEEN 3M AND FAIRFAX COUNTY**

**Exhibit D**

**3M™ Library Systems Product Performance Guarantee and Standard Warranty**

**One Year Library Systems Product Performance Guarantee:** Subject to the Limitation of Liability provided in the Sales Agreement, Section 16, 3M guarantees your satisfaction with the Performance, as defined below, of any 3M Library System Product for 12 months from the date of written acceptance by Customer by execution of an acceptance certificate in the form of Exhibit E for each Library Branch provided that a) you are the original purchaser: b) you have executed a one (1) year 3M Service Agreement for maintenance of the Library System product and c) the Product has not been subjected to abuse, misuse, accident or neglect. "Performance" means the Product performs in accordance with the requirements of the Contract and meets 3M published product specifications provided in 3M Owner's Manual and Administrator's Guide. If you are not completely satisfied with the Performance of your Library System Product, you may return the Library System Product for a prompt refund of all amounts paid for that Product. 3M will pay all reasonable de-installation and shipping charges to return the Product to 3M. Note that all claims under this Guarantee must be submitted to 3M within 12 months from the date of written acceptance of the 3M Library Systems Product. Failure to submit a claim within this time frame will invalidate this Guarantee. IMPORTANT: Consumables and non-3M branded products are excluded from this Guarantee.

**WITH THE EXCEPTION OF THE GUARANTEE and WARRANTIES SET FORTH ABOVE AND ELSEWHERE IN THE CONTRACT, 3M MAKES NO OTHER GUARANTEES, WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY OR CONDITION ARISING OUT OF A COURSE OF DEALING, CUSTOM OR USAGE OF TRADE.**

**Guarantee and Warranty Claims:** For guarantee and warranty claims, and for service, call 1-800-328-0067.

## EXHIBIT E

### Fairfax County Public Library/ 3M Library Systems Library Branch Review and Acceptance

**Branch:**

\_\_\_\_\_

**Contract:** Contract No. \_\_\_\_\_ between 3M  
Company and Fairfax County

**Number of Selfchecks ordered for this branch:** \_\_\_\_\_  
**delivered:** \_\_\_\_\_

**List serial numbers:** \_\_\_\_\_  
\_\_\_\_\_

☐ **Equipment delivered**  
**Date(s) of delivery:** \_\_\_\_\_

☐ **Equipment installed and configured**  
**Date completed:** \_\_\_\_\_

☐ **Equipment validated to be operational**  
**Date:** \_\_\_\_\_

☐ **Training completed for branch staff**  
**Date(s) of training:** \_\_\_\_\_

**Notes:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

---

---

**3M Company hereby represents that all equipment and products contemplated by the Contract for the Branch identified above has been delivered and installed.**

**This document is to confirm that an inspection of the equipment and services for this Branch have been completed as per the Contract and accepted as of the date upon which 3M and the County have executed this document below.**

**Fairfax County Systems Manager:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**3M:** \_\_\_\_\_

**Date:** \_\_\_\_\_



**17. INSURANCE:**

17.1 The contractor is responsible for its work and for all materials, tools, equipment, appliances, and property of any and all description used in connection with the project, whether owned by the contractor or by the County. The Contractor assumes all risks of direct and indirect damage or injury to any person or property wherever located, resulting from Contractor's negligent action, omission, commission or operation under the contract.

17.2 The Contractor shall, during the continuance of all work under the Contract provide the following:

- a. Maintain statutory Worker's Compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the Contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia, or which may be hereinafter enacted.
  - b. The contractor agrees to maintain Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/aggregate to protect the Contractor against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from Contractor's negligent action or operation under the contract or in connection with contracted work. The General Liability insurance shall also include the Broad Form Property Damage endorsement, in addition to coverage's for explosion, collapse, and underground hazards, where required.
  - c. The contractor agrees to maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned borrowed, leased, or rented vehicles operated by the Contractor. In addition, all mobile equipment used by the Contractor in connection with the contracted work will be insured under either a standard Automobile Liability policy, or a Comprehensive General Liability policy.
  - d. The contractor agrees to maintain Professional Liability insurance in the amount of \$1,000,000 per occurrence/aggregate to cover each individual professional staff.
  - e. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
  - f. Rating Requirements:
    - 1. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A: VI.
    - 2. European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the contractors broker can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of AVI or better.
  - g. Intentionally Omitted – Indemnity is provided in the main body of the Contract].
  - h. The Contractor will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein, and shall have it filed with the County Purchasing Agent and/or Risk Manager before any work is started.
  - i. If the Contractor delivers services from a County-leased facility, the Contractor is required to carry property insurance on all equipment, to include County-owned installed and maintained equipment used by the contractor while in their care, custody and control for use under this contract.
- 17.3. The Contractor shall furnish a new certificate 30 days prior to any material change or cancellation date. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.

- 17.4. Precaution shall be exercised at all times for the protection of persons (including employees) and property.